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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,414	04/22/2005	Harald Gaukel	10191/3791	1797
26646	7590	01/04/2008	EXAMINER	
KENYON & KENYON LLP			PHAN, HAU VAN	
ONE BROADWAY			ART UNIT	
NEW YORK, NY 10004			PAPER NUMBER	
			3618	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/532,414

Applicant(s)

GAUKEL ET AL.

Examiner

Hau V. Phan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Acknowledgment*

1. The amendment filed on 11/9/2007 has been entered.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oswald et al. (6,907,335) in view of Burdock et al. (6,526,342).**

Oswald et al. in figures 1-2, disclose a method for classifying an obstacle means of pre-crash sensor signals in a vehicle comprising an arrangement for triggering or deployment of restraining means as function of a velocity of the vehicle. The arrangement has a sensor to determine the velocity of an obstacle. Oswald et al. fail to show a sensor that used to determine the velocity of the vehicle and to perform a plausibility check for the velocity of the vehicle.

Burdock et al. in figure 1, teach an apparatus for controlling dampers in a vehicle suspension having a remote sensor to determine a velocity of a vehicle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

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modify the vehicle of Oswald et al. with the vehicle having a remote sensor as taught by Burdock et al. in order to provide a signal varying as a function of the velocity signal.

Regarding claim 10, Burdock et al. disclose the sensor can be an acceleration sensor.

Regarding claim 11, Oswald et al. disclose means (3) for modifying at least one threshold to which at least one crash signal is compared for the triggering of the restraining device, as a function of the vehicle velocity.

Regarding claim 12, Oswald et al. disclose means (2) for subdividing the vehicle velocity into a predefined class as a function of a magnitude of the vehicle velocity and then for modifying the threshold as a function of the class.

Regarding claim 13, Oswald et al. disclose the at least one remote sensor that is an upfront sensor (1).

Regarding claim 14, Oswald et al. in combination with Burdock et al. disclose means (5) for comparing the signal of the upfront sensor to a plausibility threshold. The plausibility threshold positions below a trigger threshold for generating a crash signal of the upfront sensor. The vehicle velocity is being taken into consideration in the triggering of the restraining device as a function of the comparison.

Regarding claims 15-16, Oswald et al. disclose the vehicle velocity leading to a modification of the threshold in a frontal algorithm.

Regarding claim 17, Oswald et al. do not disclose a speedometer, but all the vehicle should at least have one speedometer.

Regarding claim 18, Oswald et al. disclose the velocity base on wheel speed data.

### ***Response to Arguments***

4. Applicant's arguments filed 11/9/2007 have been fully considered but they are not persuasive. In response to applicant's remark on page 5 that Burdock discloses an accelerometer, which is not determine the velocity of the vehicle where the velocity is subjected to a plausibility test by another sensor. The examiner disagrees, because Burdock discloses a wheel speed sensor (27), which can used to determine the vehicle speed on a rough roads or sharp bend. The change in vehicle speed can be considered acceleration. Notice from specification "a plausibility check by remote sensors is for checking the velocity of the vehicle when the vehicle is driving through a pothole or driving over a curb". Therefore; the wheel speed sensor in Burdock is attached to a front wheel for checking the velocity of the vehicle when driving through the rough roads and report to a control unit (26) in response to variations in the vehicle speed.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Oswald et al. fail to show a speed sensor and Burdock et al. teach a speed sensor for measuring the vehicle speed when the vehicle is driving through a rough road.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hau V. Phan whose telephone number is 571-272-6696. The examiner can normally be reached on 7:30AM-4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hau V Phan  
Primary Examiner  
Art Unit 3618

*Hau Phan*  
*12/28/07*